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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GERARD CHANG,

No. C 09-00216 CW

Plaintiff,

ORDER GRANTING
DEFENDANT'S MOTION
FOR JUDGMENT ON THE
PLEADINGS

v.

WELLS FARGO AND COMPANY, et al.,

Defendants.

/

Defendant Wells Fargo & Company¹ moves, under Federal Rule of Civil Procedure 12(c), for judgment on the pleadings² on the claim for breach of fiduciary duty, the only claim remaining in this case. Pro se Plaintiff Gerard Chang opposes the motion. The matter was taken under submission. Having considered all of the papers filed by the parties, the Court grants Defendant's motion.

¹In the caption of the complaint, Plaintiff lists three Wells Fargo entities. Defendant indicates that it is incorrectly identified in the complaint and it should be referred to as Wells Fargo & Company. The Court will refer to Defendant as one entity called Wells Fargo & Company.

²Defendant alternatively moves for summary judgment. Because the motion for judgment on the pleadings is granted, the motion for summary judgment is denied as moot.

1 BACKGROUND

2 Plaintiff is a former employee of Greater Bay Bank (GBB),
3 which has since been acquired by Defendant. Plaintiff resigned
4 from GBB on January 26, 2005. On January 16, 2009, Plaintiff filed
5 the instant complaint and, on March 23, 2009, filed an amended
6 complaint (FAC) alleging causes of action for: (1) breach of
7 fiduciary duty; (2) breach of contract; (3) fraud; and (4) tort.
8 On August 17, 2009, the Court issued an Order granting judgment in
9 favor of Defendant on all claims with the exception of the claim
10 for breach of fiduciary duty based on Defendant's administration of
11 its employee retirement plan in violation of the Employment
12 Retirement Income Security Act (ERISA), 29 U.S.C.
13 §§ 1001-1461. Plaintiff's allegations in regard to this claim are
14 that Defendant, in its role as Administrator of the retirement
15 plan, conceals data so that plan participants cannot readily
16 ascertain if there are problems with the investment options of the
17 plan, FAC at ¶ 88, automatically pays out dividends placing a
18 burden on plan participants who want to have their dividends
19 withheld, FAC at ¶ 89, and liquidates investments which conceals
20 unrealized losses and forces plan participants to transfer their
21 balances to new funds, FAC at ¶¶ 90, 91.

22 LEGAL STANDARD

23 A motion for judgment on the pleadings, like a motion to
24 dismiss for failure to state a claim, addresses the sufficiency of
25 a pleading. Judgment on the pleadings may be granted when the
26 moving party clearly establishes on the face of the pleadings that
27 no material issue of fact remains to be resolved and that the
28 moving party is entitled to judgment as a matter of law. Hal Roach

1 Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1550 (9th
2 Cir. 1989). In testing the sufficiency of a pleading, the well-
3 plead allegations of the non-moving party are accepted as true,
4 while any allegations of the moving party which have been denied
5 are assumed to be false. Hal Roach Studios, 896 F.2d at 1550.
6 However, the court need not accept conclusory allegations. W.
7 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

8 DISCUSSION

9 Defendant argues that Plaintiff cannot bring a claim for
10 breach of fiduciary duty under ERISA in a pro se capacity.
11 Although Plaintiff filed an opposition to Defendant's motion, he
12 does not respond to this argument.

13 A claim for breach of fiduciary duty under ERISA arises under
14 29 U.S.C. § 1109(a). Civil actions for breach of fiduciary duty
15 under § 1109(a) may be brought by the Secretary, or a plan
16 participant, beneficiary or fiduciary. 29 U.S.C. § 1132(a)(2).
17 Actions under § 1109(a) are brought on behalf of the plan.
18 Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 140
19 (1985). The general rule that prohibits pro se plaintiffs from
20 litigating claims on behalf of others in a representative capacity
21 applies to cases brought under § 1109(a). Simon v. Hartford Life,
22 Inc., 546 F.3d 661, 667 (9th Cir. 2008). Therefore, a litigant
23 proceeding pro se may not bring suit under § 1109(a) for breach of
24 fiduciary duty. Id.

25 Thus, Plaintiff may not proceed with his claim for breach of
26 fiduciary duty under § 1109 because he is litigating in a pro se
27 capacity. Defendant's motion for judgment on the pleadings on this
28 claim is granted.

1

CONCLUSION

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Based on the foregoing, Defendant's motion for judgment on the
3 pleadings on the breach of fiduciary duty claim is granted.
4 Because this is the last remaining claim in this case, this case is
5 now completely adjudicated and judgment shall enter in favor of
6 Defendant. Both parties shall bear their own costs of suit.

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IT IS SO ORDERED.

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10 Dated: February 11, 2010

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Claudia Wilken

CLAUDIA WILKEN
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

CHANG et al.

Plaintiff,

Case Number: CV09-00216 CW

V.

WELLS FARGO AND COMPANY et al.

Defendant.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 11, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gerard Chang
P.O. Box 27372
San Francisco, CA 94127

Dated: February 11, 2010

Richard W. Wiekling, Clerk
By: Ronnie Hersler, Administrative Law Clerk